

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

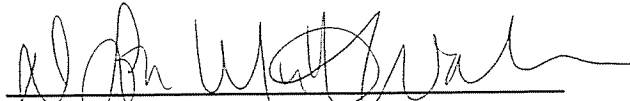
| | | |
|--|---|-------------------------|
| Martha Jane Toy, individually, and as Executrix and Personal Representative of the Estate of Russell B. Toy, deceased, |) | |
| |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | C.A. No. 05-00760 (JJF) |
| Plumbers & Pipefitters Local Union No. 74 Pension Plan, |) | |
| Trustees of Plumbers & Pipefitters Local Union No. 74 |) | |
| Pension Plan, Health and Welfare Plan, Local 74, Welfare |) | |
| Benefit Plan, Life Insurance Plan, Local 74, Welfare Benefit |) | |
| Plan, Life Insurance Plan, Local 74, Insurance Plan, |) | |
| Administrators of Pension and Welfare Plans, Trustees of |) | |
| Plumbers & Pipefitters Local Union No. 74 Welfare Plan, Plan |) | |
| Administrator of Pension & Welfare Plans, Insurance Plans, |) | |
| and Health and Welfare Benefit Plan, |) | |
| |) | |
| Defendants. |) | |

DEFENDANTS' MOTION TO DISMISS AND FOR PARTIAL SUMMARY JUDGMENT

Defendants Plumbers & Pipefitters Local Union No. 74, *et al.*, by and through their undersigned attorneys and pursuant to Fed. R. Civ. P. 12(b)(6) and 56, hereby move the Court to dismiss Count IV of the Complaint and for entry of summary judgment in favor of Defendants on Counts I, II and III of the Complaint. The grounds for this motion are set forth more fully in the accompanying brief filed herewith.

WHEREFORE, Defendants respectfully request that the Court enter the attached order dismissing Count IV of the Complaint and granting summary judgment in favor of Defendants on Counts I, II and III of the Complaint.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

A handwritten signature in dark ink, appearing to read 'Timothy J. Snyder', is written over a horizontal line.

Timothy J. Snyder (No. 2408)

Curtis J. Crowther (No. 3238)

D. Fon Muttamara-Walker (No. 4646)

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Attorneys for Defendants

Dated: December 5, 2005

CERTIFICATE OF SERVICE

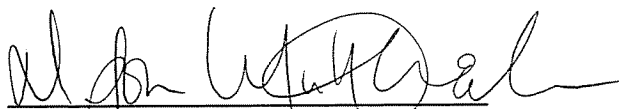
I, D. Fon Muttamara-Walker, Esquire hereby certify that on this 5th day of December, 2005, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

John M. Stull, Esq.
1300 North Market Street, Suite 700
Wilmington, DE 19899

I further certify that on this 5th day of December, 2005, I caused a copy of the foregoing document to be served by hand delivery on the above listed counsel of record and on the following non-registered participant in the manner indicated below:

BY FEDERAL EXPRESS

William B. Hildebrand, Esq.
The Law Offices of William B. Hildebrand, LLC
1040 N. Kings Hwy, Suite 601
Cherry Hill, N.J. 08034

A handwritten signature in black ink, appearing to read 'D. Fon Muttamara-Walker', is written over a horizontal line.

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